

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 20, 2016**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2014AP2880**

**Cir. Ct. No. 2011CF541**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**CHRISTOPHER L. RUMAN,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Walworth County:  
DAVID M. REDDY, Judge. *Affirmed.*

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

¶1 PER CURIAM. Christopher L. Ruman appeals from a circuit court order denying his motion to withdraw his guilty plea. For the reasons that follow, we affirm.

¶2 In December 2011, Ruman was charged with second-degree sexual assault for having forcible sexual intercourse with a sixteen-year-old girl at a barn party in the Town of LaFayette. Ruman was released on cash bond. Two conditions of his bond were (1) that he not possess or consume alcohol and (2) that he not commit any crimes.

¶3 Approximately one year later, Ruman pled guilty to one count of second-degree sexual assault. A second count of second-degree sexual assault, which was added to the information and stemmed from the same incident, was dismissed and read in. After Ruman entered his plea, the prosecutor made the following comment regarding two other matters that were referred to his office as possible bail jumping offenses:

[PROSECUTOR]: Also, just to make a record on two other ancillary matters. While this defendant was out on bond, there appears to be strong evidence of two separate bail jumping incidents.

One, um, where it's said that he was consuming alcohol in violation of his bond, and that was investigated by our Sheriff's Office. Another for him having a conversation by way of Facebook with a female, that was investigated by the City of Lake Geneva Police Department, that was being investigated as a bail jump and disorderly conduct. I am not pursuing those matters as bail jumping, and I believe that should be part of our agreement today.

¶4 Prior to sentencing, Gerald Boyle and K. Richard Wells asked to withdraw as Ruman's attorneys because Ruman had retained new counsel and was claiming that he was forced to plead guilty. Specifically, Ruman complained that he was led to believe that he would be arrested on two counts of bail jumping and that the cash bond posted by his mother would be revoked if he did not plead

guilty. When the circuit court asked about the bail jumping, the prosecutor provided the following explanation:

While out on bond on December 2, 2012, an employee of the Sheriff's Office was present at the Evolve Bar at the Grand Geneva Resort, sitting at a table with this defendant and a number of other people, where rounds of drinks were being purchased and consumed. And she overheard this defendant talking about the merits of this pending criminal case, and he confirmed it was a Walworth County felony sexual assault. That he seemed drunk towards the end of the evening, was becoming more boisterous and loud. She saw him drinking liquid and, obviously, she didn't ask to taste it, but came over as a felony bail jumping for consuming alcohol while out on bond.

There's also a City of Lake Geneva referral that came over as a disorderly conduct, I believe, because this defendant was contacting a 16-year old girl on Facebook and posted, after seeing her picture: How old is your cute ass? And her response was: 16 and I have a boyfriend. And his response was: Well, your pic screams 20. And that she reported to law enforcement she was creeped out by that. So that came over as a referral as well.

¶5 The circuit court allowed Boyle and Wells to withdraw as counsel, and Ruman filed a motion to withdraw his guilty plea. In it, he accused the prosecutor of coercing his plea by threatening to charge him with two "trumped up" bail jumping offenses if he did not plead guilty, threatening to use those bail jumping offenses as a means to request forfeiture of his cash bond, and agreeing not to ask the court to remand him to custody following entry of his plea.

¶6 The circuit court held an evidentiary hearing on Ruman's motion. There, Ruman claimed that Wells told him that if he did not plead guilty, he would be arrested on two counts of bail jumping and his cash bond would be forfeited.

Ruman further claimed that Wells told him that if he did plead guilty, he would remain free until sentencing.<sup>1</sup>

¶7 After Ruman testified, his attorney tried to call the prosecutor as a witness. In lieu of taking the stand, the prosecutor stipulated that:

I had discussions with [Ruman's] counsel about not issuing on those two felony bail jumping charges. Therefore, I wouldn't move to forfeit the bond that could be forfeited based on those bail jumps. And at the time where the presumption of innocence no longer applies, I would not ask your Honor to remand him.

When defense counsel asked for a further stipulation that the prosecutor had indicated that he would issue the bail jumping charges and ask for both forfeiture of the cash bond and remand if Ruman refused to take the plea, the prosecutor declined, stating "I can't say I ever did that, Judge."

¶8 Wells also testified at the hearing. Although he acknowledged discussions with the State about the bail jumping offenses, he stated that he had "no recollection of [the prosecutor] ever talking about forfeiting of a bond." He further stated that the prosecutor did not tell him that he would issue the bail jumping charges or seek forfeiture of the cash bond if Ruman did not plead guilty.

¶9 Wells recognized the viability of the bail jumping charges; however, he did not believe that they were anything to worry about. He told Ruman that multiple times. He also told Ruman that forfeiture of the cash bond, while possible, was unlikely and that he did not remember ever seeing a court take away bond money that had been posted by a defendant's mother.

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<sup>1</sup> Ruman's claims were supported by the testimony of his mother.

¶10 According to Wells, Ruman seemed most concerned with the likelihood of being convicted at trial and how that might affect his sentence. Eventually, Ruman decided to accept the plea agreement because he was worried about a long prison term if he was convicted at trial and thought he would fare better at sentencing if he pled guilty. Finally, Wells admitted asking the prosecutor not to request remand following Ruman's plea because he wanted Ruman to remain out of custody to better prepare for sentencing and Ruman wanted the same.

¶11 Wells' partner, Gerald Boyle, also testified at the hearing. Like his partner, Boyle believed that the bail jumping charges were viable but of little concern in terms of conviction or forfeiture of Ruman's cash bond. Boyle's main concern, which he shared with Ruman, was how bad the case looked for him. He explained:

On the basis of the totality of what I found, it was a horrific case. And then when I read the first witnesses that were talked to by this girl, then I said, it's an impossibility. I just don't see how [Ruman's] going to possibly convince a jury. There was a lot of other evidence out there like Facebook comments and conversations. Well, I think they would have been let in. And he had to testify. And the fountain of cross examination would have been endless and things he said and concepts that he made on Facebook or whatever you call that thing. The way he basically treated women, would have led me to believe that a jury was going to be extraordinarily turned off by his conduct. And ... [i]t's his personality which I happen to have thought was pretty good, but it wouldn't have been very good in front of a jury. It would have looked like he wasn't taking it serious. I think it would have been a big problem for him.

...

And with the blood that came down [the victim's] leg and all that blood that was on her, blood on his fingers which he went back and kind of showed his friends in the barn [who] saw it and he kind of made light of it. Everything about it

was very bad. And I told him that. But—you know—he would have to explain to a jury why he did what he did and that it wasn't a crime and I don't know that he could have carried the day on it.

¶12 Ultimately, the circuit court denied Ruman's motion to withdraw his guilty plea. In doing so, the court found no evidence of prosecutorial misconduct. The court also found that Ruman's former attorneys were more credible than Ruman in their testimony about the circumstances underlying his decision to plead guilty. Consequently, the court was not persuaded that Ruman had established a "credible, fair and just reason" to withdraw his plea.

¶13 Following sentencing, Ruman filed a motion for postconviction relief, raising the same arguments he made in his earlier motion. The circuit court denied the motion. This appeal follows.

¶14 A circuit court's decision to grant or deny a motion to withdraw a guilty plea made before sentencing is reviewed under an erroneous exercise of discretion standard. *State v. Jenkins*, 2007 WI 96, ¶30, 303 Wis. 2d 157, 736 N.W.2d 24. This court will affirm a circuit court's discretionary decision if it was demonstrably based on the facts of record and in reliance on the applicable law. *Id.*

¶15 Withdrawal of a guilty plea prior to sentencing is not an absolute right. *Id.*, ¶32. The defendant has the burden to prove by a preponderance of the evidence that he or she has a fair and just reason for plea withdrawal. *Id.* The reason must be something other than a desire to have a trial or belated misgivings about the plea. *Id.* The reason proffered as fair and just by the defendant must be found credible by the circuit court. *Id.*, ¶43. In other words, the circuit court must believe that the proffered reason actually exists. *Id.* The circuit court's findings

of evidentiary or historical fact, including its credibility determinations, will be upheld unless they are clearly erroneous. *Id.*, ¶33.

¶16 On appeal, Ruman contends that the circuit court erred in denying his motion to withdraw his guilty plea. He renews his arguments that the prosecutor coerced his plea by threatening to charge him with two “trumped up” bail jumping offenses if he did not plead guilty, threatening to use those bail jumping offenses as a means to request forfeiture of his cash bond, and agreeing not to ask the court to remand him to custody following his plea. We consider each one in turn.

¶17 Ruman’s first argument concerns the prosecutor’s handling of the two matters referred to his office as possible bail jumping offenses. Ruman suggests that the prosecutor engaged in misconduct by threatening to charge him with the offenses, as they were not supported by probable cause. We disagree.

¶18 A defendant who is released from custody pursuant to WIS. STAT. ch. 969 (2013-14)<sup>2</sup> commits the offense of bail jumping when he or she “intentionally fails to comply with the terms of his or her bond.” WIS. STAT. § 946.49(1). Two conditions of Ruman’s bond were: (1) that he not possess or consume alcohol and (2) that he not commit any crimes.

¶19 Here, the prosecutor had probable cause to believe that Ruman violated his bond conditions by possessing or consuming alcohol. As noted, an employee of the Sheriff’s Office witnessed Ruman sitting at a bar where alcohol was being purchased and consumed. She overheard him talking about his pending

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2013-14 version.

case and saw him drinking liquids. She described Ruman as acting drunk and boisterous towards the end of the evening. Given her observations, a charge of bail jumping was certainly viable.

¶20 The prosecutor also arguably had probable cause to believe that Ruman violated his bond conditions by committing a crime. While using Facebook, Ruman saw a picture of a girl in a cheerleading photo. He asked the girl how old she was, and she said she was sixteen. Ruman told her that her “pic screams 20.” The girl, who was aware of the sexual assault allegations against Ruman, reported that she was “creeped out” by the message. The girl’s mother similarly found the message “disturbing and offensive.” Although not as strong as the incident in the bar, Ruman’s conduct plausibly fell within the broad definition of disorderly conduct.<sup>3</sup> As such, it was not improper for the prosecutor to discuss the matter with Wells as a possible bail jumping offense.

¶21 In any event, the record does not support Ruman’s allegation that the prosecutor threatened to charge him with the bail jumping offenses if he did not plead guilty. Wells denied that such a statement was made, and the circuit court found his testimony credible. Because that finding is not clearly erroneous, Ruman’s first argument fails.

¶22 Ruman’s next argument concerns the cash bond posted by his mother. Ruman maintains that the prosecutor engaged in misconduct by

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<sup>3</sup> Disorderly conduct is committed by “[w]hoever, in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance.” WIS. STAT. § 947.01(1).

threatening to seek forfeiture of it if he refused to plead guilty. Again, we disagree.

¶23 From the testimony of Ruman's former attorneys, two points emerge. First, the prosecutor never said that he would seek forfeiture of the cash bond if Ruman did not plead guilty. Second, no one believed that forfeiture was likely to happen anyway. Wells advised Ruman of this, saying that he did not remember ever seeing a court take away bond money that had been posted by a defendant's mother. Accepting this testimony as credible, which we must do on this record, Ruman's second argument also fails.

¶24 Ruman's final argument concerns the prosecutor's agreement not to ask the court to remand Ruman following his plea. Wells had sought this agreement because he wanted Ruman to remain out of custody to better prepare for sentencing and Ruman wanted the same.

¶25 As noted by the State, prosecutors are under no obligation to request that defendants be remanded after they have been convicted, and circuit courts are not bound to honor such requests when and if they are made. The decision to remand generally rests within the court's sound discretion. *See* WIS. STAT. § 969.01(2). Here, the court exercised that discretion without input from the parties and chose not to remand Ruman.

¶26 We do not see how the prosecutor's agreement regarding remand was improper or why it resulted in a coerced plea. Again, the request to stay silent on the issue came from Wells with Ruman's permission. There is no indication that it induced Ruman's plea or was the motivation behind it. Rather, as explained by Wells, Ruman decided to accept the plea agreement because he was worried

about a long prison term if he was convicted at trial and thought he would fare better at sentencing if he pled guilty.

¶27 In the end, based on the record and circuit court findings, no basis exists to conclude that the court erroneously exercised its discretion in determining that Ruman failed to establish a “credible, fair and just reason” to withdraw his guilty plea. Accordingly, we affirm.

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

